



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/173043

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 22, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 13, 2016, at Racine, Wisconsin.

The issue for determination is whether the agency correctly established a FoodShare (FS) overpayment in the amount of \$1,514 from September 1, 2013 to August 31, 2015.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On February 11, 2016 a hearing was held regarding a FoodShare (FS) overpayment in the amount of \$6,314 from September 1, 2013 to August 31, 2015. I was the ALJ assigned to the case. On March 2, 2016 I issued a written decision concluding that the agency had incorrectly determined

the household composition, which formed the basis of the overpayment. I ordered the agency to rescind this overpayment, and the re-determine the overpayment with the child removed from the household.

3. Following my order the agency re-determined the overpayment using the correct household composition.
4. On March 9, 2016 the agency sent the petitioner a new notices of overpayment stating that the household was overpaid a total of \$1,514 in FS benefits from September 1, 2013 to August 31, 2015.
5. The petitioner did not dispute the amount of income or expenses used in determining this new overpayment.
6. On March 24, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

### **DISCUSSION**

In this case the petitioner seeks to challenge an overpayment that I decided in a prior fair hearing decision. Technically, the petitioner still has an appeal right as the agency followed my order and issued new overpayment notices, however all the issues raised on this appeal were previously litigated between the same parties during the previous appeal.

Claim preclusion, or what was formerly referred to as res judicata, has roots that extend back to Roman law. Based upon the idea that “the best interests of society demand that litigation be concluded,” it is meant to protect persons “from the annoyance of repeated litigation.” *Wisconsin Public Service Corporation, et al v. Arby Construction, Inc.*, 2010AP878, ¶ 31, 212 WI 87. Writing for our state's supreme more than a century and half ago, Chief Justice Luther Dixon, explained in a decision that remains relevant why claim preclusion is necessary:

We presume that no one will be found to dispute the proposition, that when a question of law or fact has once been determined by a court of competent jurisdiction, it cannot, except in some of the modes of review provided by law, be again contested between the same parties, whether in the same or any other court. This rule has found a place in every well regulated system of laws for the government of mankind. The necessity for it exists in the very nature of things; without it no laws could be enforced, litigation would be fruitless as well as endless, and rights, whether public or private, could never be protected, and wrongs never redressed. It follows, as a consequence of this rule, that a party, when called upon in legal form to establish a cause of action or defense, must do so by proving all the facts within his power and that if he purposely or negligently fail in doing this, he will not afterwards be permitted to deny the correctness of the determination, or renew the controversy.

*Id.*, ¶ 32, quoting *Pierce v. Kneeland*, 9 Wis. 19, 25 (1859)

Simply put, “claim preclusion exists to prevent endless litigation.” *Id.*, § 33. To ensure this, “a final judgment is conclusive in all subsequent actions between the same parties as to all matters which were litigated or which might have been litigated in the former proceeding.” *Id.* (citations omitted).

In this case the petitioner sought to raise issues already presented and litigated on the previous appeal. My previous decision remanded the case to the agency to issue new overpayment notices. These new notices reduced the overall overpayment from \$6,314 to \$1,514. I reviewed the new overpayment notices. Those notices are consistent with the order in my previous decision. Thus, the doctrine of claim preclusion applies.

### **CONCLUSIONS OF LAW**

The agency correctly established a FoodShare (FS) overpayment in the amount of \$1,514 from September 1, 2013 to August 31, 2015.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 21st day of April, 2016

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 21, 2016.

Racine County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability